Legislative Changes July 1, 2012

On June 21, 2012, proclamations issued under orders of the Lieutenant Governor in Council proclaimed a number of sections of the Securing Pension Benefits Now and for the Future Act, 2010 (Bill 120), Pension Benefits Amendment Act, 2010 (Bill 236 Size: 1875 kb), Better Tomorrow for Ontario Act (Budget Measures), 2011 (Bill 173 Size: 1975 kb) and Creating the Foundation for Jobs and Growth Act, 2010 (Bill 16 Size: 6546 kb) to be in force on July 1, 2012. This supports the Ontario Government's commitment to modernize and strengthen the Pension Benefits Act (PBA).

The proclaimed sections of each Bill are provided in the following:

- Bill 16 Size: 10 kb
- Bill 120 Size: 8 kb
- Bill 173 Size: 8 kb
- Bill 236 Size: 106 kb

On June 26, 2012 the following regulations were filed:

1. Ontario Regulation 178/12 made under the PBA and amending Regulation 909, R.R.O. 1990 (General). Certain provisions related to Qualifying Pension Plans come into force on September 1, 2014. All other provisions come into force July 1, 2012.
2. Ontario Regulation 179/12 made under the PBA amending Ontario Regulation 178/11 (Solvency Funding Relief for Certain Public Sector Pension Plans) comes into force on July 1, 2012.
3. Ontario Regulation 180/12 made under the PBA amending Ontario Regulation 196/11 (Abibow Canada Inc. Pension Plans) comes into force on July 1, 2012.
4. Ontario Regulation 181/12 made under the PBA amending Ontario Regulation 321/09 (General Motors Pension Plans) comes into force on July 1, 2012.
5. Ontario Regulation 182/12 made under the PBA amending Ontario Regulation 99/06 (Stelco Inc. Pension Plans) comes into force on July 1, 2012.
6. Ontario Regulation 183/12 made under the Financial Services Commission of Ontario Act, 1997 and amending Ontario Regulation 11/01 (Assessment of Expenses & Expenditures) comes into force on July 1, 2012.

Additional information about some of the changes taking effect July 1, 2012 is provided in the following links.

Commuted Value Transfers

Crediting of Interest on Contributions and Payments

Disclosure to Members and Accessing Pension Records

Elimination of Partial Wind Up

Grow-in

Immediate Vesting

Individual Pension Plans

Retired Members

Small Amounts

- Payments (Section 50(1) of PBA)
- Survivor Pension Small Amounts (Section 44(7) of PBA)

Solvency Funding Relief Measures

Surplus Withdrawals

Transfers of Unlocked Amounts to RRSPs or to RRIFs

TABLE OF CONCORDANCE

BILL 16 AND PENSION BENEFITS ACT

BILL SECTION	**PBA SECTION (new)**
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2(2)	5.1(5)

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BILL 120 AND PENSION BENEFITS ACT

BILL SECTION	**PBA SECTION (new)**
BILL 120	
3(2)	10(2.1)
3(5)	10(2) para 3
21(4)	68(3)
21(5)	68(3) repealed
21(7)	68(4)
26(2)	77.11(3)
26(5)	77.11(7) paras 1 iii, 2 iii, 3 iii
29(1)	79(1)(b)(c)(d), repealed (e)
29(10)	79(4)
48	Amends Pension Benefits Amendments Act, 2010, not the PBA

TABLE OF CONCORDANCE

BILL 173 AND PENSION BENEFITS ACT

BILL SECTION	**PBA SECTION (new)**
BILL 173	
4(1)	48(8)
6	74(1)

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BILL 236 AND PENSION BENEFITS ACT

BILL SECTION	PBA SECTION (new)
BILL 236	
1(1)	1(1) “”bridging benefit”
1(2)	1(1) “employer”
1(3)	1(1) “former member”
1(5)	1(1) “pension benefit”
1(7)	1(1) “retired member”
2	1.1
3(2)	8(2)
8(1)	14(1)(c)
11(1)	24(1)
17(2)	29(1)
17(3)	29(1)(c.1)
17(5)	29(2)
17(6)	29(3)(4)(5)(6)(7)
18(3)	30(2)(3)
19	30.1
20	Heading before s. 35
23(1)	36(1)
23(2)	36(4)
24(1)	37(1)
24(2)	37(4)
26(1)	39(1)
26(2)	39(3)(4)
26(3)	39(4.1)(4.2)
27	40(3)(4)
28(1)	41(1)
29(1)	42(1)
29(2)	42(3)
30(1)	44(1)
30(2)	44(2)
30(3)	44(3)
30(4)	44(4)(b)
30(5)	44(7)(8)(9)
32	47
33(1)	48(1)
33(2)	48(1)(b)(c)
33(3)	48(2)

BILL SECTION	PBA SECTION (new)
BILL 236	
33(4)	48(3)
33(6)	48(6)(7)(8)
33(7)	48(8.1)(8.2)(8.3)(8.4)
33(8)	48(12)
34	49(1)
35(1)	50(1)
35(2)	50(1)
35(3)	50(3)(4)
36	50.1
37(1)	52(1)
37(2)	52(1)(b)
41(1)	63(1)
41(2)	63(2)
41(3)	63(3)(4) repealed
41(4)	63(6) repealed
41(5)	63(7)
41(7)	63(9)(10)
42	64 repealed
43(1)	67.1(1)
43(2)	67.1(2)
44(1)	67.2(1)
44(2)	67.2(2)
44(3)	67.2(6)
45	67.3(1)
46(1)	67.4(1) before para 1
46(2)	67.4(1) para 2
46(3)	67.4(1) para 3
46(4)	67.4(1) para 5 ii
46(5)	67.4(2)
46(6)	67.4(4)
46(7)	67.4(6)
46(8)	67.4(8)
46(9)	67.4(10) before para 1
46(10)	67.4(10) para 1
46(11)	67.4(10) para 3
47(1)	67.5(1)
47(2)	67.5(2)
48(1)	67.6(4)

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BILL 236 AND PENSION BENEFITS ACT

BILL SECTION	PBA SECTION (new)
BILL 236	
48(2)	67.6(7)
49(1)	68(1)
49(2)	68(1.1) para 1
49(3)	68(1.1) para 2
49(4)	68(2)
50(1)	69(1)
50(2)	69(1)(d), repealed(e)
50(3)	69(1)(f)
50(4)	69(1)(g)
50(5)	69(2)(3)(4)
51	69.1
52(1)	70(1)
52(2)	70(1)(b)
52(3)	70(5)
52(4)	70(6)
52(5)	70(6) repealed
53	71(1)
54(1)	72(1)
54(3)	72(2)
54(4)	72(2.1)
55(1)	73(1)
55(2)	73(1)(a)
55(3)	73(1)(c)

BILL SECTION	PBA SECTION (new)
BILL 236	
55(4)	73(3)(4)(5)
56(1)	74(1)(1.1)(1.2)(1.3)
56(2)	74(2)
56(3)	74(3)
56(4)	74(4)
56(5)	74(5)
56(6)	74(8)
56(7)	74(9) repealed
58	75(1)
59(1)	75.1(1)
60	77
61	77.1, 77.2, 77.3, 77,4, 77.5, 77.6, 77.7, 77.8, 77.9, 77.10
62(1)	78(2)(a)(b)(b.1)
73(1)	84(1) para 3
73(2)	84(1) para 4
73(3)	84(1) para 5
73(4)	84(1) para 6
73(5)	84(1) para 7
73(6)	84(2)
73(8)	84(4) repealed
79(1)	115(1)(m)

Crediting Interest on Contributions and Payments

Amendment to Section 24 of General Regulation 909:

Effective July 1, 2012, section 24 of Regulation 909 - which deals with crediting of interest on contributions and other payments - is replaced by sections 24 and 24.1–24.5 of Regulation 909.

There are no material changes to the crediting of interest on contributions or payments. However, 'bank deposit rate' and 'pension fund rate of return' are now defined terms.

Crediting Interest on Retroactive Pension Payments:

Q1. If a pension plan owes retroactive pension payments to a retired member, should these payments be credited with interest? If so, how should the interest be credited and what rate should be used?

A1. Yes, retroactive pension payments owing to the retired member must be credited with interest. The minimum interest rate to be used is the same rate that is used to calculate the interest on contributions to the plan made by members and former members, as set out in section 24(2) or 24(3) of Regulation 909: General (depending on whether the plan is a defined benefit plan or a defined contribution plan).
Interest should be credited to each pension payment from the date when the pension payment was due until the beginning of the month in which it is actually paid. The lump sum amount owing to the retired member is, therefore, the sum of each of the pension payments plus interest on each specific pension payment. -04/2016

New Provisions Related to the Disclosure of Records

Effective July 1, 2012, a number of sections of the Pension Benefits Amendment Act, 2010 (Bill 236) related to disclosure of pension information were proclaimed to be in effect. In addition, Regulation 178/12, effective July 1, 2012, includes a number of related amendments that support the new provisions.

Record Keeping and Disclosure Changes

Effective July 1, 2012, a number of changes are made to the Record Keeping and Disclosure sections of the Pension Benefits Act (PBA) and Regulation 909 (Regulation). Many of these changes are being made to modernize the language of the PBA, as well as to clarify certain sections. Some of the more significant changes that are effective July 1, 2012, are outlined below:

1. Members May Access Administrator Plan Records Electronically or by Mail

As of July 1, 2012, the PBA is amended to grant eligible individuals (including members, former members, retired members, their spouses, and their agents) access rights that entitle them, if they make the request in writing and pay a fee, to access certain administrator plan records electronically or by mail. This access right by an individual is limited to once per calendar year for a specific plan record. The administrator must allow individuals who are inspecting plan records to extract information from the records, or to copy the prescribed records without charging them a fee.

In accordance with amendments to the Regulation, the following plan records may be accessed electronically or by mail:

- the current pension plan provisions (including any amendments to the plan);
- the most recent actuarial reports filed;
- the most recent financial statements, or audited financial statements filed for the pension plan or pension fund;
- the most recent actuarial information summary filed;
- the most recent annual information return filed;
- the most recent investment information summary filed; and
- the most recent statement of investment policies and procedures for the plan.

2. Fees for Administrator Plan Records

If plan records are requested, the Regulation, as of July 1, 2012, provides that the maximum fee for paper copies is 25 cents per page. If one or more plan records are being provided electronically, the maximum fee is $5.00 for each request to the administrator.

3. Administrator Plan Records Include Actuarial Information Summaries and Other Information Summaries

As of July 1, 2012, the Regulation is amended to clarify that administrator plan records are available for inspection, and that they include actuarial information summaries and other information summaries (e.g. investment information summary).

4. New Access Rights for Former Spouses

As of July 1, 2012, the PBA is amended to provide that former spouses now have limited access rights to administrator plan records for family law purposes, as set out in family law legislation (Regulation 287/11). The plan records that are available to the member, former member and retired member must also be made available to a former spouse or their representative, if:

- the former spouse has applied for a Statement of Family Law Value; or
- the member, former member or retired member has applied for a Statement of Family Law Value.

The administrator is not required to make the records available to the former spouse or their representative after the earlier of:

- one year after the date the administrator provides the Statement of Family Law Value to the former spouse and the member, former member or retired member; and
- the date the administrator transfers a lump sum to the former spouse, or starts to pay a share of the retired member's pension to the former spouse.

5. Provide Statements/Notices to Members Electronically

As of July 1, 2012, the PBA is amended to authorize administrators to use electronic means to send certain notices, statements and other plan records to members, former members, retired members, other plan beneficiaries, and their agents. Electronic delivery may only be used if the administrator has the individual's permission to do so and the electronic means comply with the Electronic Commerce Act, 2000.

6. Delivery of Superintendent's Pension Plan Records Electronically or by Mail

As of July 1, 2012, the PBA is amended to require the Superintendent to provide certain plan records electronically or by mail, if a written request and fee (to be established by the Minister) is received from an administrator or an individual with access rights (including members, former members, retired members, their spouses and their agents). In accordance with amendments to the Regulation, the following records may be provided electronically or by mail:

- the current pension plan provisions (including any amendments to the plan);
- the most recent actuarial reports filed;
- the most recent financial statements, or audited financial statements filed for the pension plan or pension fund;
- the most recent actuarial information summary filed;
- the most recent annual information return filed; and
- the most recent investment information summary filed.

The Superintendent may provide these documents electronically to a requestor, if the individual has provided his or her permission to do so.

7. Investment Information Summaries

As of July 1, 2012, the Regulation is amended to require an administrator of a pension plan that provides defined benefits to file an investment information summary in a form approved by the Superintendent, within six months after the plan's fiscal year end. Administrators of individual pension plans and designated plans are exempted from this requirement.

8. Changes to Member Statements

As of July 1, 2012, the Regulation is amended to make various changes to the disclosure requirements for the statements that are provided to members (e.g., annual, termination or retirement statements).

Questions and Answers on Delivering Plan Records Electronically and by Mail

Q1. Are all plan records available electronically or by mail?

A1. No, all plan records are not available electronically or by mail. The following plan records are available electronically or by mail:

- the current pension plan provisions (including any amendments to the plan);
- the most recent actuarial reports filed;
- the most recent financial statements, or audited financial statements filed for the pension plan or pension fund;
- the most recent actuarial information summary filed;
- the most recent annual information return filed;
- the most recent investment information summary filed; and
- the most recent statement of investment policies and procedures for the plan (from the administrator only). -06/12

Q2. May I get a copy of all the available plan records sent to me by email?

A2. The administrator will need to determine whether or not plan records can be sent to a particular email address, as email is not always a secure method for transferring information. If plan records are not available by email, they may be provided to you by some other electronic means (e.g., compact disc, flash drive). Note that the administrator may charge a maximum of $5.00 for each request you make, when one or more records are provided electronically. -06/12

Q3. How much will it cost to have copies of plan records mailed to me?

A3. If you request to receive plan records by mail, the administrator may charge up to 25 cents per page for each paper copy. -06/12

Q4. Is the $5.00 fee charged for each record or each request?

A4. The administrator may charge a maximum of $5.00 for each request for plan documents that will be provided electronically. Note that a request may include more than one plan record. -06/12

Q5. I prefer to receive plan records in paper form. Can the administrator require me to accept copies of plan records electronically?

A5. No, the administrator may only send electronic copies if you agree. Note that the administrator may charge up to 25 cents per page for a paper copy. -06/12

Questions and Answers on Changes to Disclosure Statements

Q6. For what reporting period or event date must the benefit statements issued to members, former members and retired members meet the disclosure requirements that are effective as of July 1, 2012?

A6. If a benefit statement was issued for a period end date (e.g. plan year end) or event date (e.g. termination date) that is before July 1, 2012, it must, at a minimum, meet the disclosure requirements that were in effect before July 1, 2012. If a benefit statement was issued for a period or event date that includes, or is after July 1, 2012, it must meet the new requirements as of July 1, 2012.

For example:

1) If annual benefit statements are to be issued for a pension plan with a fiscal year end date of January 31, 2012, the statements must be issued to members by July 31, 2012. Since the plan's fiscal year end date occurs before July 1, 2012, the annual statement must, at a minimum, meet the disclosure requirements that were in effect before July 1, 2012.

2) If a member terminated employment on June 15, 2012, a termination statement must be issued by July 15, 2012. Since the termination (event) date occurs before July 1, 2012, the termination statement must, at a minimum, meet the disclosure requirements that were in effect before July 1, 2012.

3) If a member terminated employment on July 3, 2012, a termination statement must be issued by August 3, 2012. Since the termination (event) date occurs after July 1, 2012, the termination statement must meet the disclosure requirements that are in effect on July 1, 2012. -06/12

Q7. Are refunds of unlocked small pension amounts required to receive the same full disclosure that is provided to terminated members?

A7. No. As of July 1, 2012, the disclosure that must be provided to a terminated member for a small pension amount is limited to the information provided in section 41(1.1) of the Regulation. -06/12

For more information see FSCO Policies:

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Access to Information
Administrator
Disclosure - By the Administrator

New Requirements for Grow-In, Opting Out of Grow-In and Partial Wind Up

The amendments to the Pension Benefits Act (PBA) eliminating partial wind ups and identifying a broader range of circumstances that will trigger grow-in benefits to be paid to eligible members of pension plans that provide defined benefits were proclaimed into force July 1, 2012. The PBA also identifies circumstances that will not trigger grow-in benefits to be paid.

The amendments to the PBA allowing employers and members of Jointly Sponsored Pension Plans (JSPPs) and administrators of multi-employer pension plans (MEPPs) to opt out of providing grow-in benefits to their members were also proclaimed into force July 1, 2012.

Regulation 178/12 (the Regulation) made under the PBA also came into effect on July 1, 2012. The Regulation identifies an additional circumstance that will trigger grow-in benefits to be paid to eligible members. The Regulation also sets out the mechanics of the opting out process for those JSPPs and MEPPs that decide to opt out of providing grow-in benefits to their members.

New Requirements for Grow-in

Under the PBA, eligible members become entitled to grow-in to certain benefits (referred to as "grow-in benefits"), such as an unreduced early retirement pension, even though their employment is terminated before they have met the eligibility requirements to qualify for the benefits. To be eligible, members must be employed in Ontario and their combination of age plus years of continuous employment or membership in the plan must equal at least 55 on the relevant date.

If an individual ceases to be a member of the plan as a result of the employer's termination of his or her employment, the relevant date is the effective date of termination. If an individual ceases to be a member of the plan as a result of the wind up of the plan, the relevant date is the effective date of the wind up.

For example, a plan may provide that a member is entitled to begin receiving an unreduced pension when he or she reaches 60 years of age. If a member's membership is terminated when he or she is 48 and at the date of termination the member has 10 years of continuous employment or membership in the plan, the member would be eligible to begin receiving an unreduced pension when he or she is 60. This is because the member's age plus years of continuous employment or membership in the plan is equal to at least 55 on the effective date of termination. The pension the member will receive will be based on the benefits he or she earned as at the effective date of wind up or termination.

Circumstances triggering payment of Grow-in

Before July 1, 2012, grow-in benefits were available to eligible members of pension plans that provided defined benefits only when they ceased to be members of their plans on the wind up of the plans. As of July 1, 2012, grow-in benefits are available to eligible members in a broader set of circumstances (referred to in the PBA as "activating events").

The following circumstances are identified in the PBA and Regulation as activating events that will trigger grow-in benefits to be paid to eligible members:

1. the wind up of a pension plan, if the effective date of the wind up is on or after April 1, 1987;
2. the employer's termination of the member's employment, if the effective date of the termination is on or after July 1, 2012; and
3. the member resigns before the termination date specified in a written notice of termination of employment given to him or her by the employer.

Circumstances not triggering payment of Grow-in

If the member's employment was terminated as a result of wilful misconduct, disobedience or wilful neglect of duty by the member that is not trivial and has not been condoned by the employer, such termination of employment is not considered to be an activating event. In that circumstance, a member will not be entitled to grow-in benefits.

The Regulation identifies other circumstances that are not considered to be activating events and where members will not be entitled to grow-in benefits. They are:

1. where the member is a construction employee within the meaning of Ontario Regulation 285/01(Exemptions, Special Rules and Establishment of Minimum Wage) made under the Employment Standards Act, 2000; and
2. where the member is on temporary lay-off within the meaning of subsection 56(2) of the Employment Standards Act, 2000.

Questions and answers on new grow-in rules

Opting out of grow-in – JSPPs and MEPPs

Section 74.1 of the PBA permits JSPPs and MEPPs to opt out of providing grow-in benefits to their members. The election to opt out must be exercised by:

1. the employers (or any persons or entities who make contributions on behalf of the employers or who represent employers) and the members (or the representatives of the members) of a jointly-sponsored pension plan (JSPPs), in the case of a JSPP; and
2. the administrator of a multi-employer pension plan (MEPP), in the case of a MEPP.

The election to opt out must be made within a prescribed period and satisfy certain requirements.

Please refer to the special posting of June 5, 2012, which explains in detail the period for making the election and the requirements that must be satisfied for opting out.

Questions and answers on opting out of the new grow-in rules

Elimination of Partial Wind Ups

As of July 1, 2012, partial wind ups of pension plans are eliminated. Any plan whose effective date of wind up is on or after July 1, 2012 may not be wound up in part.

For a partial wind up with an effective date prior to July 1, 2012, the rules that were in effect for wind ups prior to July 1, 2012 continue to apply (except that the administrator is not required to purchase life annuities for members, former members, retired members or other persons entitled to benefits under the plan in order to distribute the assets in connection with the partial wind up – see subsection 77.2 of the PBA). Eligible members who are affected by the partial wind up will continue to be entitled to be paid grow-in benefits.

Questions and answers on the elimination of partial wind up and transitional issues

Questions and Answers on the New Grow-in Rules under Section 74 of the Pension Benefits Act

Q1. What is "grow-in"?

A1. As of July 1, 2012, a pension plan member is entitled to grow-in to certain benefits (referred to as "grow-in benefits") if his or her pension plan provides defined benefits, and he or she ceases to be a member because his or her employment is terminated (subject to some limited exceptions) or the plan is wound up. This right entitles the eligible plan member to receive the pension beginning on the date on which the member would have been entitled to an enhanced or unreduced pension under the pension plan, if his or her employment or membership had continued to that date.

To be eligible for grow-in benefits:

- the member must be employed in Ontario at the time of wind up or termination of employment;
- the member's age plus years of continuous employment or membership in the plan at the effective date of wind up or the effective date of termination must equal at least fifty five (55); and
- the member must not be a member of a Jointly-Sponsored Pension Plan (JSPP) or a Multi-Employer Pension Plan (MEPP) that has opted out of providing grow-in benefits.

To be eligible to grow-in to bridging benefits under the plan the member must have at least ten years of continuous employment with the employer or have been a member of the plan for at least ten years.

Please note that the legislation limits the rights of a plan member who is a construction employee within the meaning of Ontario Regulation 285/01 made under the Employment Standards Act, 2000 to receive grow-in benefits.

Please also note that if a member is entitled to grow-in benefits, the dollar amount of the benefits the member will receive are based on the benefits that have been earned (or accrued) up to the relevant date.

For example, a plan may provide that a member is entitled to begin receiving an unreduced pension when he or she reaches 60 years of age. The plan also offers a bridging benefit payable from age 60 to age 65. If a member's membership is terminated when he or she is 48 and at the date of termination the member has 10 years of continuous employment or membership in the plan, the member would be eligible to begin receiving an unreduced pension when he or she is 60. This is because the member's age plus years of continuous employment or membership in the plan is equal to at least 55 on the effective date of termination. The pension the member will receive will be based on the benefits he or she earned as at the effective date of wind up or termination and would also include the bridging benefit offered under the pension plan because the member has 10 years of continuous employment with the employer or has been a member of the plan for 10 years. -06/12

Q2. How are the new grow-in provisions different from those in effect before July 1, 2012?

A2. Prior to July 1, 2012, eligible members of a pension plan that provided defined benefits were entitled to receive grow-in benefits only when they ceased to be members of their pension plans on the wind up of the plans. As of July 1, 2012, eligible members will be entitled to grow-in benefits in a broader set of circumstances (referred to in the new grow-in provisions as "activating events"). -06/12

Q3. What circumstances trigger payment of grow-in benefits?

A3. As of July 1, 2012, the legislation identifies the following as "activating events" that will trigger the payment of grow-in benefits:

- the wind up of the pension plan;
- the employer's termination of the member's employment without cause, if the effective date of termination is on or after July 1, 2012; and
- the member resigns before the termination date specified in a written notice of termination of employment given to him or her by the employer. -06/12

Q4. What circumstances will not trigger the payment of grow-in benefits?

A4. The legislation excludes the following circumstances from being "activating events":

- termination of the member's employment, if it is a result of willful misconduct, disobedience, or willful neglect of duty by the member that is not trivial, and has not been condoned by the employer;
- the member is only on temporarily lay-off (as defined in subsection 56(2) of the Employment Standards Act, 2000); and
- termination of a member, if the member is a "construction employee" (as defined in Regulation 285/01 made under the Employment Standards Act, 2000).

In these circumstances members will not be entitled to be paid grow-in benefits. -06/12

Q5. I received notice that my employment with XYZ Inc. will be terminated on September 30, 2012. I got a job offer in another province and intend to resign from XYZ Inc. on July 15, 2012. Will I still be entitled to grow in benefits?

A5. Yes, you are still entitled to grow-in benefits if you resign before the termination date specified in the written notice of termination of employment given to you by your employer. -06/12

Q6. My employment was terminated on June 30, 2012 and the pension plan is not being wound up. Am I entitled to grow-in benefits?

A6. No. Since your employment was terminated before July 1, 2012, and there was no full or partial wind up of the pension plan, you are not entitled to grow-in benefits. -06/12

Q7. I am employed in Ontario and my pension plan is registered with British Columbia. My employment was terminated on July 1, 2012. Am I entitled to grow-in benefits?

A7. You are entitled to grow-in benefits if:

- your age, plus years of continuous employment or membership in the plan total at least 55 on your termination date; **and**
- you do not fall into one of the circumstances that are excluded from grow-in. -06/12

Opting Out of Grow-in

Q8. Can a pension plan elect to opt out of providing grow-in benefits under section 74 (grow-in for members) of the Pension Benefits Act?

A8. Only Jointly Sponsored Pension Plans (JSPPs) and Multi-Employer Pension Plans (MEPPs) can be excluded from the operation of section 74 of the Pension Benefits Act (PBA).

For a JSPP, the election may be made by the employers (or any persons or entities who make contributions on behalf of the employers or who represent the employers) and the members (or representatives of the members). For a MEPP, the plan administrator (Board of Trustees) may make the election. The effective date of the election must be on or after July 1, 2012 and it cannot be earlier than the date on which the election is filed with the Superintendent. -06/12

Q9. Once the decision to opt out of providing grow-in is made and an election has been filed with the Superintendent, can the election be rescinded?

A9. Yes, the election to opt out may be rescinded any time after it is filed with the Superintendent. The rescission takes effect when notice of the rescission is filed with the Superintendent or on a later date specified in the notice. -06/12

Q10. Is there a deadline for making the election to opt out of grow-in?

A10. Yes. A pension plan that is already a Jointly Sponsored Pension Plan (JSPP) or Multi-Employer Pension Plan (MEPP) on July 1, 2012 had until July 1, 2013 to make and file the election to opt out of grow-in.

A pension plan that becomes either a JSPP or a MEPP after July 1, 2012 has one year after the date it becomes a JSPP or a MEPP to make and file the election to opt out of grow-in. -08/2014

Q11. How should the election to opt out of grow-in be made?

A11. The notice of election to opt out of grow-in may be included in a letter to the Superintendent or FSCO. For a Jointly Sponsored Pension Plan (JSPP), the notice of election must be signed by an individual who is authorized to sign the election on behalf of the employers (or any persons or entities who make contributions on behalf of the employers or who represent the employers) and members (or representatives of the members) of the JSPP. For a Multi-Employer Pension Plan (MEPP), the notice of election must be signed by the administrator of the MEPP, or an individual who is authorized to sign the election on behalf of the administrator of the MEPP.

The signed notice of election must be filed with the Superintendent of the Financial Services at:

Attn: Pension Division

Financial Services Commission of Ontario
5160 Yonge Street
P.O. Box 85, 4th Floor
Toronto ON M2N 6L9 -06/12

Q12. What information must be included in the notice of election?

A12. The notice of election must include the following:

- the name of the pension plan;
- the plan's registration number;
- a statement that an election is being made to exclude the pension plan (include its full name and registration number) and its members from the operation of section 74 of the PBA;
- the name and address of the plan administrator;
- the name, address and contact information of a representative of the administrator who is able to respond to questions from FSCO relating to the election; and
- the effective date of the election to opt out of providing grow-in benefits. (Note that the effective date of the election cannot be before the date it is filed with the Superintendent.)

For a Jointly Sponsored Pension Plan (JSPP), the notice of election must also include a confirmation that the decision to exclude the plan and its members from the operation of section 74 of the PBA was made by the employers (or any persons or entities who make contributions on behalf of employers or who represent the employers) and members (or representatives of the members) of the JSPP.

For a Multi-Employer Pension Plan (MEPP), the notice of election must also include a confirmation that the decision to exclude the plan and its members from the operation of section 74 of the PBA was made by the plan administrator, or an individual who is authorized to sign the election on behalf of the administrator. -06/12

Q13. I am the administrator of a Multi-Employer Pension Plan (MEPP) that is registered in British Columbia and that has Ontario plan members. Can I elect to opt out of grow-in under Section 74 of the PBA?

A13. Yes, you can elect to opt-out of grow-in by filing the notice of election with the Superintendent of Pensions of British Columbia. Note that you must send a copy of the signed notice of election with the Superintendent of the Financial Services at:

Attn: Pension Division
Financial Services Commission of Ontario
5160 Yonge Street
P.O. Box 85, 4th Floor
Toronto ON M2N 6L9 -06/12

Q14. Can the effective date of the election be before July 1, 2012?

A14. No. The provision that permits a JSPP or MEPP to be excluded from the operation of section 74 only comes into effect on July 1, 2012. Therefore, the effective date of the election cannot be before July 1, 2012. -06/12

Q15. Can the effective date of the election be before the date the election is filed with the Superintendent?

A15. No. The effective date of the notice of election cannot be before the date the election is filed with the Superintendent. However, the notice of election can specify an effective date that is after the date the notice is filed with the Superintendent. If the effective date of the notice of election is before the date it is filed and received by the Superintendent, the election will not be valid. A new notice of election will need to be filed and it will need to have a valid effective date. -06/12

Q16. Does a plan administrator have to notify plan members, the union and its pension advisory committee (if applicable) that it has elected to opt out of providing grow-in?

A16. Yes. Plan members, individuals who are eligible or required to join the plan, trade unions and pension advisory committees where they have been established by members and former members under section 24 of the PBA, must be given notice of the election and the effective date of the election.

Written notice must be given to:

- plan members employed in Ontario in the first annual statement that is transmitted to members after the election is filed with the Superintendent;
- a trade union that represents members employed in Ontario and to the pension advisory committee, if any, established under section 24 of the PBA, within 90 days, after the election is filed with the Superintendent;
- each person who, on or after the effective date of the election, is eligible or required to become a plan member and is employed in Ontario within 60 days prior to the date on which the person will become eligible or is required to become a member. Where the person is eligible to become a member of the plan upon commencing employment, notice must be provided within sixty days after the person commences employment. In all cases the notice is to be included in the information to be provided to the person under subsection 25(1) of the PBA. -06/12

Q17. Our pension plan does not want to opt out of providing grow-in benefits. Do we need to file anything with the Superintendent?

A17. If your pension plan is a Jointly Sponsored Pension Plan (JSPP) or a Multi-Employer Pension Plan (MEPP), and a decision is made not to opt out of providing grow-in, you do not need to file anything with the Superintendent. A notice of election only needs to be filed with the Superintendent if your JSPP or MEPP decides to opt out of grow-in. -06/12

Q18. How do I know if my pension plan is a Multi-Employer Pension Plan (MEPP) or a Jointly-Sponsored Pension Plan (JSPP)?

A18. Please check with your plan administrator, to find out whether your pension plan is a JSPP or MEPP. Alternatively, you may also find this information in your employee booklet, your annual statement, or in other documents that were provided to you by the plan administrator when you joined the pension plan. You can also check FSCO's website for Pension Plan Access Information. -06/12

Q19. Who do I contact to find out if my pension plan has elected to opt out of providing grow-in benefits?

A19. If your pension plan is a Jointly-Sponsored Pension Plan (JSPP) or a Multi-Employer Pension Plan (MEPP), and has elected to opt out of providing grow-in benefits, if you are employed in Ontario you will receive a notice of the election and the effective date of the election in the first annual statement that is transmitted to you after the election is filed with the Superintendent. Your union and/or pension advisory committee (if any) will receive notice of the election and the effective date of the election as well within 90 days after the election is filed.

You may also contact your plan administrator for this information. -06/12

Opting out of the new grow-in provisions by JSPPs and MEPPs

Updated as at March 2014

Changes to Section 74 of the Pension Benefits Act

In 2010, section 74 of the Pension Benefits Act (PBA) was amended such that, subject to certain limited exceptions, grow-in benefits must be provided to every member whose employment is terminated by the employer. This applies if the effective date of the termination is on or after July 1, 2012. The amendment was proclaimed in force effective on July 1, 2012.

In conjunction with the amended section 74, section 74.1 of the PBA was also proclaimed in force effective July 1, 2012. This provision permits employers (or any persons or entities who make contributions on behalf of the employers or who represent the employers) and the members (or the representatives of the members) of jointly sponsored pension plans (JSPPs) and administrators of multi-employer pension plans (MEPPs) to elect to exclude their pension plans and their members from the operation of section 74 of the PBA, i.e. to opt out of providing grow-in benefits to their members.

Changes to General Regulation 909

Regulation 178/12 amended the General Regulation 909 under the PBA (the Regulation) to include the mechanics of the opting out process. Among other things, the Regulation sets out deadlines for the making and filing of an election under section 74.1 of the PBA. The Regulation provides that for a pension plan that was a JSPP or a MEPP on July 1, 2012, the deadline for making and filing an election was July 1, 2013.

As at July 1, 2013, eight of the ten JSPPs registered with FSCO have opted out of providing grow-in benefits to their members. Similarly, as at July 1, 2013, of the 76 MEPPs registered with FSCO providing defined benefits, 52 elected to opt out of providing grow-in benefits to their members. The 24 MEPPs that did not file an election with the Superintendent as at July 1, 2013 may no longer elect to opt out of providing grow-in benefits to their members.

The Regulation also provides that a pension plan that becomes a JSPP or a MEPP after July 1, 2012 has one year after the date on which the administrator files a statement certifying that the pension plan satisfies the criteria to be a JSPP in the case of a JSPP, or one year after the date the pension plan is registered as or is amended to become a MEPP in the case of a MEPP, to make and file an election under section 74.1 of the PBA, to opt out of providing grow-in benefits to its members. Therefore, those JSPPs and MEPPs that became JSPPs or MEPPs after July 1, 2012 that wish to elect to opt out of providing grow-in benefits to their members and who satisfy the requirements in the Regulation in connection with the election, must make and file their elections with the Superintendent within the prescribed time set out above. However, until such time as the election to opt out is filed with the Superintendent, they must provide grow-in benefits to eligible members in accordance with section 74 of the PBA.

Election

The election to be filed with the Superintendent may be contained in a letter to the Superintendent and must include the following information:

- The name and registration number of the pension plan;
- A statement that an election is being made to exclude the pension plan (insert full name and registration number) and its members from the operation of section 74 of the PBA.
- The name and contact information of the administrator and the name and contact information of a representative of the administrator who is able to respond to questions from FSCO relating to the election; and
- The effective date of the election – this date cannot be earlier than the date on which the election is filed.

In the case of a JSPP, the election must also include a confirmation that the decision to exclude the plan and its members from the operation of section 74 of the PBA was made by the employers (or any persons or entities who make contributions on behalf of the employers or who represent the employers) and the members (or representatives of the members) of the JSPP.

In addition, the election must be signed by an individual authorized to sign the election on behalf of the employers (or any persons or entities who make contributions on behalf of the employers or who represent the employers) and the members (or representatives of the members) of the JSPP.

In the case of a MEPP, the election must also include a confirmation that the decision to exclude the plan and its members from the operation of section 74 of the PBA was made by the administrator of the plan. In addition, the election must be signed by the administrator of the MEPP or an individual authorized to sign the election on behalf of the administrator of the MEPP.

Providing Notice of Election to Affected Persons

The plan administrator must provide notice of the election of the plan to opt out of providing grow-in, as well as the effective date of the election, to members, unions and any advisory committee as required under section 30.2(6) of the Regulation. For more information on this, see FAQs on Opting out of grow-in (Question 16). Within 60 days of providing this notice, the administrator must certify to the Superintendent that each required notice was given and the date it was given.

JSPPs and MEPPs not registered with FSCO

Plan administrators of those JSPPs and MEPPS that are registered in other jurisdictions and have Ontario members may also elect to opt out of providing grow-in benefits to their Ontario members. As in the case of JSPPs and MEPPs registered with FSCO, the deadline for making and filing an election under section 74.1(1) or 74.1(2) for pension plans with Ontario members that are registered in other jurisdictions that were JSPPs or MEPPs on July 1, 2012, was July 1, 2013. As at July 1, 2013, nine such MEPPs opted out of providing grow-in benefits to their members.

An administrator of a JSPP or MEPP that became or becomes a JSPP or a MEPP after July 1, 2012 has one year after the date on which the administrator files a statement certifying that the pension plan satisfies the criteria to be a JSPP in the case of a JSPP, or one year after the date the pension plan is registered as or is amended to become a MEPP in the case of a MEPP, to make and file and election to opt out of providing grow-in to its Ontario members. Administrators of such plans may file their elections with the pension plan's province of registration with a copy to FSCO. Until such time as the election to opt out is filed with the

plan's province of registration (with a copy to FSCO), such a pension plan must provide any grow-in benefits to eligible members in accordance with section 74 of the PBA.

The notices that are filed must include the information listed above under the heading "Election". In the case of the JSPP, the election must be signed by an individual authorized to sign the election on behalf of the employers (or any persons or entities who make contributions on behalf of the employers or who represent the employers) and the members (or representatives of the members) of the JSPP.

In the case of a MEPP, the election must be signed by the administrator of the MEPP or an individual authorized to sign the election on behalf of the administrator of the MEPP.

MEPPs and JSPPs that do not opt out of providing grow-in

If a JSPP or a MEPP does not make and file an election within the deadline set out in the Regulation, it may no longer do so. Such a pension plan must provide grow-in benefits to eligible Ontario members. This applies whether the pension plan is registered in Ontario or in another jurisdiction.

FSCO Contact Information

Financial Services Commission of Ontario
5160 Yonge Street
P.O. Box 85
Toronto, Ontario M2N 6L9
(416) 250-7250
1-800-668-0128

More information can be found under Questions and Answers on the New Grow-in Rules under Section 74 of the Pension Benefits Act.

Full and Partial Wind Ups - Frequently Asked Questions

Q1. I understand that partial wind ups have been eliminated. What does this mean and when did this take effect?

A1. The Pension Benefits Act (PBA) was amended July 1, 2012 to eliminate any partial wind up with an effective date that is on or after July 1, 2012. A plan may still be wound up in part, if the effective date of the partial wind up is prior to July 1, 2012. The effective date of the partial wind up may be determined after July 1, 2012. The transition rules concerning partial wind ups can be found in sections 77.1 to 77.10 of the PBA. - 07/2016

Q2. What is grow-in, and how does it affect the rights of members affected by a wind up (full or partial)?

A2. Under section 74 of the Pension Benefits Act (PBA), a pension plan member is entitled to grow-in to certain benefits (referred to as 'grow-in benefits') if his or her pension plan provides defined benefits and he or she ceases to be a member in certain circumstances, including on the wind up of a pension plan. This includes plan members affected by a full wind up, or a partial wind up with an effective date prior to July 1, 2012.

Not all pension plans provide for enhanced or unreduced pensions prior to the normal retirement date under the pension plan. For those that do, grow-in rights entitle the eligible plan member to receive an enhanced or unreduced pension beginning on the date on which the member would have been entitled to such a pension if his or her employment or membership had continued to that date.

For a member to be eligible for grow-in benefits on plan wind up:

- he/she must be employed in Ontario at the time of wind up;
- his/her age plus years of continuous employment or membership in the pension plan at the effective date of wind up must equal at least fifty five (55); and
- he/she must not be a member of a Jointly-Sponsored Pension Plan (JSPP) or a Multi-Employer Pension Plan (MEPP) that has opted out of providing grow-in benefits.

For more information on grow-in benefits, please refer to Questions and Answers on the New Grow-in Rules under Section 74 of the Pension Benefits Act. - 07/2016

Q3. On a partial wind up, does the Pension Benefits Act (PBA) require the plan administrator to purchase life annuities for members in the partial wind up group who are receiving pension payments or who chose or are deemed to have chosen an immediate or deferred pension?

A3. No. Effective July 1, 2012, the Pension Benefits Act (PBA) does not require the pension plan

administrator to purchase annuities for members in the partial wind up group who are receiving pension payments or who chose or are deemed to have chosen an immediate or deferred pension as part of a partial wind up.

However, the plan administrator may still purchase annuities in conjunction with the partial wind up if it determines it is prudent to do so.

Please also note, eligible members affected by a partial wind up retain the right to require the transfer of the commuted value of their pension benefit to an insurance company for the purchase of a life annuity under section 42(1)(c) of the PBA. In this case, the administrator is required to purchase annuities for such members. The amount of the annuity purchased in these circumstances would be that which can be purchased from the insurer with the commuted value, not necessarily the amount defined under the pension plan. - 07/2016

Q4. What happens to the pension benefits if the plan administrator does not choose to purchase life annuities for members in the partial wind up group who are receiving pension payments or who chose or are deemed to have chosen an immediate or deferred pension?

A4. If the plan administrator does not purchase life annuities for members affected by the partial wind up who elected or are deemed to have elected a pension or a deferred pension, the liabilities and supporting assets for this group will be transferred to the on-going portion of the pension plan. Affected members already in receipt of pension payments prior to the transfer will continue to receive pension payments from the pension fund. Affected members with a deferred pension will also receive pension payments from the pension fund when they retire.

Administrators who transfer the liabilities and supporting assets for a partial wind up group to the ongoing portion of the plan, should refer to FSCO's policy on Distribution of Benefits on Partial Wind Up Where Immediate or Deferred Pensions are Not Purchased, for more information. - 07/2016

Q5. Will affected members remain entitled to any surplus related to the partial wind up if the immediate or deferred pensions are transferred to the on-going portion of the plan?

A5. Yes. If any surplus is to be paid to the members affected by the partial wind up, all affected members including retired and former members will be entitled to a portion of that surplus, regardless of what options they have chosen in respect of their pension benefits. - 07/2016

Q6. Must annuities be purchased for pension plan members affected by a full wind up?

A6. Yes. Since the pension plan will not be continuing on a full wind up of the plan, a plan administrator must purchase life annuities for retired members and for members entitled to a deferred pension who have not elected to transfer the value of the pension out of the plan. - 03/2010

Q7. I was in a partial plan wind up and chose to leave my pension in the plan. Will I

be entitled to any ad hoc increases or other retired members' benefits provided by the company?

A7. Any entitlement to an ad hoc pension increase or other retired members' benefits is at the discretion of the company. - 03/2010

Q8. I administer a pension plan that is being wound up. The plan has an active member affected by the wind up who has requested section 42(1) portability rights under section 73(2) of the Pension Benefits Act (PBA). The member is past the normal retirement age and is entitled to receive an immediate pension. Is my plan required to provide this member with portability rights under section 73(2)? Would the answer be the same for a partial wind up?

A8. Yes. In a wind up situation, section 73(2) of the Pension Benefits Act (PBA) provides that all members, regardless of age, are entitled to section 42(1) portability rights except those actually in receipt of a pension on the effective date of the wind up. The answer would be the same for a partial wind up situation. - 07/2016

More information:

Want to view a link in a new window?
Right-click the link and select "open in new window"

FSCO Policies on Wind Up of a Pension Plan

Immediate Vesting

Effective July 1, 2012, the Pension Benefits Act (PBA) is amended to provide for immediate vesting of pension benefits.

A member who terminates employment on or after July 1, 2012 is entitled to a deferred pension in accordance with new PBA sections 36(1) and 37(1).

Note that under a multi-employer pension plan or jointly sponsored pension plan, a member is deemed to have terminated employment upon termination of plan membership, in accordance with section 38(2) of the PBA.

Questions and answers regarding immediate vesting:

Q1. If an employee joined a pension plan on April 1, 2012 and terminated employment on July 31, 2012, is the member entitled to immediate vesting?

A1. Yes, any member who terminates employment on or after July 1, 2012 is immediately vested. -06/2012

Q2. If an employee joined a pension plan on April 1, 2012 and terminated employment on June 30, 2012, is the member entitled to immediate vesting?

A2. No, a member who terminates employment before July 1, 2012 is not entitled to immediate vesting unless the pension plan provides for it. The member would be entitled to a refund of contributions, if any had been made, plus interest. -06/2012

Q3. Does the new immediate vesting rule apply to pension benefits earned before January 1, 1987?

A3. Yes. If a member terminates employment on or after July 1, 2012, all benefits earned by the member on or after January 1, 1965 will vest immediately. -06/2012

Q4. Does the immediate vesting rule also apply to part-time employees who are members of a pension plan?

A4. Yes, the immediate vesting rule applies to both full time and part time members who terminate employment on or after July 1, 2012. -06/2012

Q5. An employee is waiting to join a pension plan because he or she has not yet satisfied the eligibility requirements for plan membership. Does the immediate vesting rule apply to this person?

A5. Immediate vesting does not affect pension plan eligibility requirements. Immediate vesting only applies once the employee joins the pension plan. -06/2012

Q6. Do the plan terms have to be amended to provide for immediate vesting?

A6: The plan terms should be amended to reflect immediate vesting. However, as immediate vesting is a minimum legislative standard under the PBA, a member who terminates employment on or after July 1, 2012, is entitled to immediate vesting whether or not the plan terms have been amended. -06/2012

Individual Pension Plans

Ontario Regulation 178/12 made under the Pension Benefits Act (the "PBA Regulation") includes a definition for "individual pension plan" (IPP). The treatment of such plans under the Pension Benefits Act (PBA) will be similar to that of designated plans. Both types of plans are likely to be put in place for executives or persons connected to the employer. Both designated plans and IPPs must comply with both the Income Tax Act (Canada)ITA and the PBA requirements.

Answers to frequently-asked-questions (FAQs) are provided below. Each FAQ shows the date on which it was posted.

General

Q1. What is a 'designated plan'?

A1. A designated plan is defined in the PBA Regulation as a pension plan that is a designated plan for the purposes of the ITA. It is defined in the Income Tax Regulation as:

- a registered pension plan that contains a defined benefit provision;
- it is not maintained pursuant to a collective bargaining agreement; and
- the total pension credits of all specified individuals under the designated pension plan for the year exceeds 50% of the total pension credits of **all** individuals under the particular designated pension plan for the year. A specified individual is one who is either connected to an employer who participates in the plan or one whose earnings exceed 2.5 times the Year's Maximum Pensionable Earnings (YMPE).

FSCO will rely on the Canada Revenue Agency's (CRA) advice as to whether or not a plan meets the requirements of the ITA in order to be considered a designated plan. -06/2012

Q2. What is an 'individual pension plan' (IPP)?

A2. An IPP is defined in the PBA Regulation as a pension plan that is an IPP for the purposes of the ITA.

The Income Tax Regulation defines an IPP as:

- a registered pension plan that contains a defined benefit provision; and
- at any time in the year or a preceding year, the plan

1. has three or fewer members and at least one of them is related (within the meaning of the ITA) to a participating employer in the plan;, or,
2. is a designated plan and it is reasonable to conclude that the rights of one or more members to receive benefits under the plan exist primarily to avoid the application of paragraph (1).

Many individual pension plans may also be designated plans (but not all). -06/2012

Q3. What is a 'connected person' or a 'significant shareholder'?

A3. 'Connected person' is a term used and defined in the Income Tax Regulation (subsection 8500(3)). – Please refer to those regulations and/or to material produced by the CRA (such as the Registered Pension Plan guide) for a precise definition. In general terms, a 'connected person' is one who either has a 10% or greater ownership interest (voting and/or non- voting) in the employer, or who is related to the employer.

The PBA Regulation defines a 'significant shareholder' as an individual who (alone or in combination with a parent, spouse or child) owns or has a beneficial interest, directly or indirectly, in shares that represent 10 per cent or more of the voting rights attached to the shares of the employer who contributes to the pension plan. The term 'significant shareholder' under the PBA Regulation, is similar, but not identical, to the term 'connected person' as used in the Income Tax Regulation. -06/2012

Q4. Do the same Ontario regulatory requirements apply to designated plans and individual pension plans (IPPs) as for other single employer defined benefit plans?

A4. In general, the requirements under the PBA are the same for designated plans and IPPs as for other single employer defined benefit pension plans. However, there are some exceptions:

- Designated plans and IPPs are not eligible for Pension Benefit Guarantee Fund (PBGF) coverage and are therefore not required to pay PBGF assessment fees;
- Under a designated plan or an IPP, an employer is only required to make contributions if they are eligible contributions under the ITA;
- There are specific restrictions on funding for designated plans under the ITA. The funding requirements for designated plans in Ontario are discussed in FSCO's Policy on Funding Requirements for Designated Plans in Ontarioe: ## kb. These requirements only apply to an IPP if it also meets the definition of a designated plan;
- A significant shareholder and the employer may jointly consent, in writing, to the reduction of the significant shareholder's pension or pension benefit or ancillary benefits. Designated plans and IPPs may have significant shareholder members but this is not always the case. -06/2012

Form 1.2: Individual Pension Plan Certification

Q1. How do I notify the Financial Services Commission of Ontario (FSCO) that the plan is an IPP?

A1. FSCO has introduced a new Form - Form 1.2: Individual Pension Plan Certification - to streamline its process to identify an IPP. The plan administrator completes and signs the form, certifying that the pension plan complies with Section 1.(1) of Regulation 909 of the PBA and meets the definition of an IPP under the Income Tax Act (ITA) for purposes of the PBA.

Subsequent to the filing of this certification, if it is determined that the plan is not an IPP, the plan administrator will be responsible for all filings, fees and penalties associated with the correct status of the pension plan in FSCO's records and bringing all related filings and other PBA requirements up to date. -07/2014

Q2. How will FSCO use the information collected in Form 1.2: Individual Pension Plan Certification Form?

A2. FSCO will rely on the administrator's certification that the pension plan is an IPP. FSCO may also share this information with the Canada Revenue Agency (CRA) for confirmation that the plan meets the requirements to be considered anIPP under the ITA.

If CRA advises FSCO that the plan is not an IPP, FSCO will take appropriate regulatory action to ensure that the plan is in compliance with the PBA. -07/2014

Custodial Agreements

Q1. I am the administrator of an individual pension plan (IPP) that is funded under a trust agreement with individual trustees. Am I required to file a separate custodial agreement along with my application for registration of a pension plan?

A1. Yes. Section 9(2)(c) of the Ontario Pension Benefits Act (PBA) requires the administrator of a pension plan to file certified copies of the documents that create and support the pension fund along with the application for registration of a pension plan. In FSCO's view, this includes a separate custodial agreement, unless the pension fund trustee is a financial institution that is appointed as trustee and custodian and 'the financial institution' has custody of the pension fund assets. -06/2016

Q2. What is a pension fund custodian?

A2. A pension fund custodian is the financial institution that holds some or all of the pension fund's assets, pursuant to an agreement with the pension fund trustees, and is responsible for their safekeeping. Typically, the custodian for an IPP will be a brokerage house (e.g., Ontario registered investment dealer). -06/2016

Q3. What is a custodial agreement?

A3. A custodial agreement is the legal agreement between the pension fund trustee and the custodian. -06/2016

Q4. What are the custodial agreement requirements imposed under the PBA?

A4. Section 79(1) of Regulation 909 under the PBA requires that the assets of every pension plan be invested in accordance with the federal investment regulations (section 6, 7, 7.1 and 7.2 and Schedule III to the federal Pension Benefits Standards Regulations, 1985), as modified in sections 47.8 and 79 of Regulation 909.
Section 6 of the federal investment regulations sets out investment requirements and defines "custodial agreement". Section 6(2) of the federal investment regulations requires that a custodial agreement provide that:

- an investment made or held on behalf of the pension plan constitutes part of the pension fund;
- the investments shall not at any time constitute an asset of the custodian or nominee; and,
- the custodian shall maintain records that are sufficient to allow the ownership of any investment to be traced to the pension plan at any time.

The pension fund trustee and the custodian should enter into a custodial agreement that clearly demonstrates that the sole purpose of opening any account is to hold pension fund assets. If the pension fund trustee is a board of trustees, one or more trustees should sign the custodial agreement, in accordance with the requirements of the trust agreement. -06/2016

Q5. If the custodian for the pension fund changes, am I required to file the new custodial agreement?

A5. Yes. Section 12(3) of the PBA requires the administrator of a pension plan to file a certified copy of each document that changes the documents that create and support the pension fund. In FSCO's view, this includes a custodial agreement. -06/2016

Q6. Do I have to file a custodial agreement if my IPP is entirely invested in mutual or segregated funds?

A6. No. If an IPP is entirely invested in mutual or segregated funds there will be no separate custodial agreement. In such cases, the administrator should confirm this in writing and include a copy of the confirmation of holdings from the mutual fund record-keeper and/or the life insurance company. -06/2016

IPP Minimum Withdrawals

Q1. I am turning 72 this year and must, under the ITA, begin to receive benefit payments from my IPP. The ITA rules require the IPP to pay me the greater of: 1. the regular pension amount payable under the terms of the IPP; or, 2. the minimum amount that would be required to be paid from the IPP as if the IPP assets were held in a Registered Retirement Income Fund (RRIF). Is the latter option possible under the PBA?

A1. No. The IPP is a registered defined benefit pension plan under the PBA, and the IPP must comply with the provisions of the PBA. The PBA does not allow for RRIF type payments from a pension plan. Therefore, benefit payments from the IPP cannot be paid out as if the IPP assets were held in a RRIF. However, there may be circumstances when surplus assets, if the plan has any, under the IPP may be used to bring the pension being paid to the retired member up to the required RRIF level. For example, this could be done where the plan terms permit payment of surplus from the ongoing plan to the retired member(s) of the plan. -03/2013

Q2. In July 2012 the CRA released information regarding the requirement to amend the terms of an IPP, as defined under subsection 8300(1) of the Income Tax Regulations, to comply with the IPP minimum withdrawal condition under subsection 8503(26) of the Regulations. I am aware that FSCO is refusing to register such an amendment because the Pension Benefits Act does not allow for RRIF type payments. How should I proceed?

A2. The Registered Plans Directorate (RPD) of the CRA issued a clarification to its requirement to file an amendment regarding the terms of an IPP. The clarification said, in part,

"If the plan is subject to pension standards legislation, and the regulator has publicly stated that it will refuse such an amendment, the RPD will not require the filing of the amendment for the time being. Further guidance will be provided in relation to the filing of the amendment in due course.
However, even if an amendment is not required at this time, IPPs with members who turned 71 in prior years are still required to pay out the minimum amount. Failure to comply with subsection 8503(26) of the Regulations makes an IPP a revocable plan and the Minister may issue a notice of intent to revoke the registration of the plan as set out in paragraphs 147.1(11)(c) and (l) of Income Tax Act.
If the administrator cannot make a payment based upon the IPP minimum amount, due to the restrictions of the pension regulator, then the administrator of the plan should advise the RPD. The RPD will deal with each IPP on a case by case basis to determine whether or not to pursue revocation of the plan. Where an actual conflict exists (for example, an IPP minimum amount would be more than the plan's actuarial surplus), this information will be taken into consideration."

Any questions about this issue should be directed to the Canada Revenue Agency – Registered Plans Directorate. -03/2013

Individual Pension Plans (IPPs)

The Financial Services Commission of Ontario (FSCO) is aware that Canada Revenue Agency is concerned that transfers from registered pension plans to Individual Pension Plans (IPPs) may not always comply with the federal *Income Tax Act* (ITA). We are concerned that some transfers to IPPs do not satisfy the requirement under the Ontario *Pension Benefits Act* (PBA) and that amounts transferred must be administered as a pension or deferred pension. This means that the eventual payment from the IPP must be made only in the form of a pension. Money that should be paid as a pension must not become surplus and subsequently be paid out in cash.

FSCO wants to warn individuals who may be considering an IPP, of the possible problems that may occur if the transfer is not done in accordance with pension legislation. Plan administrators should be aware that a transfer of the commuted value to an IPP cannot occur unless the administrator of the IPP certifies that the money transferred will be administered as a pension or deferred pension. If it becomes apparent that a plan provision or amendment that does not comply with these requirements has been filed, we will consider taking steps to revoke its registration.

New Definitions for "Retired Member" and "Former Member"

Before July 1, 2012, the definition for "former member" in the Pension Benefits Act (PBA) covered retirees, deferred vested members, and other individuals who were entitled to payments from the pension fund. Effective July 1, 2012, new definitions for "retired member" and "former member" were added to the PBA.

Retired Members

Under the PBA, a "retired member" is an individual whose employment or plan membership has been terminated, and who satisfies one of the following criteria:

- is receiving a pension from the pension fund;
- is entitled to start receiving a pension, because the individual has reached his or her normal retirement date under the plan, even though he or she has not elected to receive the pension;
- has elected [under section 41(1) of the PBA] to start receiving an early retirement pension; or
- has elected, under the terms of the plan, to start receiving a pension from the plan, whether or not the first pension payment is deferred until a later date.

Former Members

Under the PBA, a "former member" is an individual whose employment or plan membership has been terminated, who does not qualify as a retired member, and who satisfies one of the following criteria:

- is entitled to a deferred pension that is payable from the pension fund; or
- is entitled to receive any other payment from the pension fund.

Prior references to "former member" in the PBA and its associated regulations have been amended to include both retired members and former members (as redefined), as appropriate.

All existing FSCO pension policies that deal with retired members and former members are being reviewed to determine if updates are required, and whether new policies should be developed.

Questions and Answers on the New Definitions for "Retired Member" and "Former Member"

Q1: Although I have reached the normal retirement date specified in the terms of my pension plan, I am still employed by my employer and continuing to earn benefits

under my employer's pension plan. Am I considered to be a "retired member" of the pension plan?

A1: No. Since you continue to be employed and are still earning (or accruing) benefits under the pension plan, you are considered to be a member of the pension plan. To qualify as a "former member" or "retired member," you would have to terminate your employment or plan membership, and meet one of the other criteria that are set out in the definition for a "former member" or "retired member". -06/12

Q2: I have terminated my employment and plan membership, and am eligible to start receiving pension payments, even though I have not yet reached my normal retirement date under the plan's terms. I am currently not receiving, and have not applied for, a pension from the plan. Am I considered to be a "retired member?"

A2: No. You qualify as a "former member," not a "retired member." You would be a "retired member" if you elected to start your pension payments. -06/12

Q3: I have terminated my employment and plan membership, and have reached my normal retirement date under the terms of the plan. I am currently not receiving a pension from the plan. Am I considered to be a "retired member?"

A3: Yes. In this situation, you qualify as a "retired member." -06/12

Q4: I have terminated my employment and plan membership, and have elected, using the process required by my plan administrator and the terms of the plan, to start being paid my pension in five months. Am I considered to be a "retired member?"

A4: Yes. In this situation, you qualify as a "retired member." -06/12

Q5: I am a former member or a retired member of a pension plan. Should I be receiving an annual statement about my pension benefits from the plan administrator?

A5: Effective January 1, 2015, the PBA requires that Plan administrators must provide a benefit statement to all former and retired members of a pension plan at least every two years (biennially). The first former and retired member statements must be distributed no later than July 1, 2017. -11/2016

More Information:

Want to view a link in a new window?
Right-click the link and select "open in new window"

FSCO Policy on Retirement Dates

Payment of a Small Amount under Section 50(1) of the Pension Benefits Act

Effective July 1, 2012, a new section 50(1) of the Pension Benefits Act (PBA) comes into force and the old section 50(1) is repealed.

The new section 50(1) allows small amount unlocking to be extended to more people by making the maximum "small amount" higher and adding a new way to calculate a "small amount." However, small amount unlocking continues to be available only if the pension plan provides for it.

Under the old section 50(1), small amount unlocking was only available to a former member of a pension plan whose annual benefit payable at normal retirement was not more than 2 percent of the Canada Pension Plan Year's Maximum Pensionable Earnings (YMPE) in the year he or she terminated employment.

The new section 50(1) provides that if either:

(a) the annual benefit payable at a former member's or retired member's normal retirement date is not more than 4 percent of the YMPE in the year that he or she terminated employment; or

(b) the commuted value of the former member's or retired member's benefit is less than 20 percent of the YMPE in the year that he or she terminated employment;

then the former member or retired member is entitled to receive a lump sum payment equivalent to the commuted value of the benefit (small amount), instead of a pension under the pension plan.

Note that under a multi-employer pension plan or jointly sponsored pension plan, a member is deemed to have terminated employment upon termination of plan membership, in accordance with section 38(2) of the PBA.

Transfers to an RRSP or RRIF

Effective July 1, 2012, former members and retired members entitled to payment of a small amount may request that it be paid into an RRSP or RRIF. See Transfers to a Registered Retirement Savings Plan (RRSP) or to a Registered Retirement Income Fund (RRIF).

Frequently Asked Questions regarding (new) section 50(1) of the PBA:

Q1. Can a member who is still working take a small amount out of the pension plan?

A1. No. Section 50(1) only applies when a member has terminated employment, which includes retirement or death. -06/2012

Q2. If the plan terms do not provide for the payment of small amounts, can the plan administrator still make a payment?

A2. No. The plan terms must explicitly provide for the payment of small amounts. Otherwise, the benefit must be paid as a pension from the pension plan. -09/2017

Q2.1. Can the plan terms use generic wording to allow the payment of small amounts, instead of referring to the exact percentages that are set out in section 50(1) of the PBA?

A2.1. Yes, the plan terms may use generic wording that refers to the limits that are allowed under the PBA. - 10/2012

Q3. Does the former member's or retired member's benefit have to satisfy both criteria (a) and (b) of section 50(1) of the PBA in order to qualify as a small amount?

A3. No, the benefit has to satisfy only one of (a) or (b). -09/2017

Q4.1. If the plan terms provide for the payment of small amounts based on the old criteria, can the plan administrator automatically apply the new criteria for the payment of small amounts as of July 1, 2012?

A4.1. No, the new criteria cannot be automatically applied. The use of the small amounts provisions of the PBA is discretionary and must be set out in the plan terms. The plan administrator must continue to apply the old criteria for the payment of small amounts, until the plan terms are amended to reflect the new criteria. The plan terms should correspond to the requirements of the amended section 50(1) of the PBA, or use generic wording. - 10/2012

Q5.1 If a former member's benefit qualifies as a small amount under section 50(1) of the PBA, can a pension plan's terms require a lump sum payment of his or her benefit?

A5.1 Yes, the plan terms can require a lump sum payment of the benefit. -09/2017

Q5.2. If a retired member's benefit qualifies as a small amount under section 50(1) of the PBA, can a pension plan's terms require a lump sum payment of his or her benefit?

A5.2. The plan terms can require a lump sum payment of the benefit if it qualifies as a small amount. However, in FSCO's view, the small amount payment must be calculated and paid before pension payments commence. In other words, the plan terms cannot require a lump sum payment of the benefit to those who are already in receipt of a pension from the plan. -09/2017

Q6. What is the 'commuted value of the benefit' under criteria (b) of section 50(1) of the PBA for a defined contribution benefit?

A6. For a defined contribution benefit, the "commuted value of the benefit" is the defined contribution account balance. -06/2012

Q7. How is the small amount to be determined under section 50(1) of the PBA for a pension plan that provides a combination of a defined benefit and a defined contribution benefit?

A7. For a pension plan that provides a combination of a defined benefit and defined contribution benefit, the benefits must be added together before applying criteria (a) and/or (b). For example, the commuted value of the defined benefit can be added to the defined contribution account balance and the total compared to criteria (b) which is 20% of the YMPE in the year in which he or she terminates employment. -06/2012

Q8. Is the payment of a benefit that qualifies as a small amount under section 50(1) of the PBA subject to any of the transfer restrictions that apply under section 19 of Regulation 909, i.e., in cases where the pension plan making the payment has a funding deficiency at the time payment is made?

A8. No. The payment of a benefit that qualifies as a small amount under section 50(1) of the PBA is not subject to Regulation 909's section 19 transfer restrictions. -06/2012

Q9: Can we apply the new criteria for payment of small amounts to a former member who has a deferred pension under the plan, if he/she terminated employment prior to July 1, 2012?

A9: Yes. However, you must use the Year's Maximum Pensionable Earnings (YMPE) for the year in which the former member terminated his/her employment. -10/2012

Q10: What Year's Maximum Pensionable Earnings (YMPE) should I use for determining the payment of small amounts under section 50(1) of the PBA?

A10: You must use the YMPE for the year in which the member terminated his/her employment. The YMPE for any other year, such as the year payment of the benefit is actually made, is irrelevant to section 50(1) of the PBA. -10/2012

Q11. For purposes of the small amounts test, should we use the commuted value of the benefit that was calculated at the time of termination of employment, or the benefit that is payable now?

A11. For the small amounts test under section 50(1) of the PBA, you must use the commuted value of the benefit that was calculated at the time of termination of employment. -09/2017

Q12. What options are available for payment of small amounts if the plan terms include this provision?

A12. If the plan terms provide for payment of small amounts, a person who is entitled to the payment must be given the option to:

- receive the amount in cash;
- transfer the amount to an RRSP; or
- transfer the amount to a RRIF. -09/2017

Payment of A Survivor Pension Small Amount - Section 44(7) of the Pension Benefits Act

Effective July 1, 2012, section 44(7) is added to the Pension Benefits Act (PBA).

This new section provides that a pension plan may provide for payment of the commuted value of a joint and survivor pension to the surviving spouse of a retired member as a lump sum (instead of paying a survivor pension), if:

1. the annual benefit payable to the surviving spouse is not more than 4 percent of the Canada Pension Plan's Year's Maximum Pensionable Earnings (YMPE) for the year in which the retired member died; or
2. the commuted value of the benefit payable to the surviving spouse, calculated as of the date of the retired member's death, is less than 20 percent of the YMPE for the year in which the retired member died; and
3. the pension plan is amended to permit such a payment.

The lump sum would be paid on an unlocked basis, and in accordance with new sections 44(8) and 44(9) of the PBA, a surviving spouse may require that the pension plan pay the amount into a registered retirement savings plan (RRSP) or registered retirement income fund (RRIF). The process for requesting a payment into an RRSP or RRIF is explained further here: Transfers to a Registered Retirement Savings Plan (RRSP) or to a Registered Retirement Income Fund (RRIF).

Questions and answers regarding the payment of a survivor pension small amount:

Q1. Do the plan terms have to be amended to provide for the lump sum payment of a survivor pension small amount?

A1. Yes. If the plan terms do not provide for the lump sum payment of a survivor pension small amount it cannot be made, and the retired member's surviving spouse must be paid a survivor pension. -06/2012

Q3. Does the survivor benefit have to satisfy both criteria (a) and (b) of section 44(7) of the PBA in order to qualify as a small amount?

A3. No, the survivor benefit has to satisfy only one of (a) or (b). -06/2012

Q4. Can the plan terms require that a retired member's surviving spouse receive his or her survivor benefit as a lump sum payment if the survivor benefit qualifies as a small amount under section 44(7) of the PBA?

A4. If the first instalment of a retired member's pension was due on or after July 1, 2012, the plan terms can require that a lump sum payment be made to a retired member's surviving spouse if the survivor benefit qualifies as a small amount. However, in FSCO's view, the small amount payment must be calculated at the date of death, and before survivor pension payments

commence. In other words, the plan terms cannot require a lump sum payment to those who are already in receipt of a survivor pension from the plan.

In cases where the first instalment of a retired member's pension was due before July 1, 2012, section 44(7.1) of the PBA provides that the retired member's surviving spouse must consent in writing to the payment of the commuted value of the survivor benefit. -09/2017

Q5. Is the payment of a survivor pension small amount subject to any of the transfer restrictions that apply under section 19 of Regulation 909, i.e., in cases where the pension plan making the payment has a funding deficiency at the time payment is made?

A5. No. The payment of a survivor pension small amount is not subject to any of the transfer restrictions that apply under section 19 of Regulation 909. -06/2012

Q6. If the plan terms provide for payment of a survivor pension small amount, what are the options available to a retired member's surviving spouse who is entitled to this payment?

A6. If the plan terms provide for payment of a survivor pension small amount, the surviving spouse must be given the option to:

- receive the amount in cash;
- transfer the amount to an RRSP; or
- transfer the amount to a RRIF. -09/2017

Q7. What are the timelines for the transfer of a survivor pension small amount to an RRSP or RRIF?

A7. If a retired member's surviving spouse wishes to transfer the survivor pension small amount to an RRSP or RRIF, he or she must direct the plan administrator to do so within 90 days after the plan administrator notifies him or her of these transfer options. The plan administrator must transfer the amount to the RRSP or RRIF within 60 days after receiving the surviving spouse's direction. -09/2017

Surplus Withdrawals

The Pension Benefits Act (PBA), as amended by the Pension Benefits Amendment Act, 2010 (Bill 236 Size: 1875 kb) and by Securing Pension Benefits Now and for the Future Act, 2010 (Bill 120), introduced new surplus withdrawal rules that came into force on December 8, 2010. Under the new surplus withdrawal rules an employer can receive payment of surplus from a continuing pension plan or on the wind-up of a pension plan in one of three ways:

1. If the documents that create and support the pension plan and pension fund provide for the payment of surplus to the employer; or
2. If a written agreement between the employer and at least two-thirds (2/3) of members and an appropriate percentage of former members, retired members and other persons who are entitled to payments under the plan provides for the payment of surplus to the employer; or
3. if the payment is authorized by a court order declaring that the employer is entitled to surplus while the plan continues (where the application is for consent to payment of surplus to an employer out of a continuing plan), or when the plan is being wound up (where the application is for consent to payment of surplus to an employer out of a plan that is being fully wound up).

Regulation 178/12 made under the PBA effective July 1, 2012 revokes the provisions of Regulation 909 supporting the previous surplus withdrawal rules so they no longer apply. For example, it revokes section 8 of Regulation 909 often referred to as the "surplus sharing regulation".

Regulation 178/12 also changes the information that must be included in a notice of application for the Superintendent's consent for the withdrawal of surplus by the employer to members, former members, retired members and any other individual who is receiving payments out of the pension fund of the plan. As of July 1, 2012, such a notice of application does not need to provide information about the surplus attributable to employee and employer contributions.

Also, where the employer's application for consent to the payment of surplus is based on a written agreement between the employer and members, former members, retired members and other persons who are entitled to payments under the plan, the notice of application does not need to include a historical plan summary and analysis.

Regulation 178/12 makes other changes to old surplus rules. To determine the minimum amount of surplus that must be retained in the pension fund of a continuing plan, the calculation of liabilities for the ongoing plan must now be based on the sum of solvency liabilities and the liabilities for benefits, other than pension benefits and ancillary benefits payable under qualifying annuity contracts, that were excluded in calculating the solvency liabilities.

Finally previously when an employer chose to fund the deficit on wind up subsection 32(4) of Regulation 909 indicated that where an annual valuation report showed that there was no further amount to be funded by the employer and there were remaining assets in the pension fund, these remaining assets were surplus and the employer had to make a surplus withdrawal application to the Superintendent for the payment of those assets to the employer. Regulation 178/12 revokes the old subsection 32(4) and substitutes a new provision that

provides the assets remaining in the pension fund may be withdrawn by the employer by way of an application to recover an overpayment under section 62.1 of the PBA.

Questions and Answers relating to Surplus

Questions and Answers relating to Surplus Withdrawal On Wind Up - Section 78(2) Notice Requirements

Transfers to a Registered Retirement Savings Plan (RRSP) or to a Registered Retirement Income Fund (RRIF)

Effective July 1, 2012, persons entitled to certain types of lump sum payment may direct the plan administrator to pay the unlocked amount directly to an RRSP or RRIF, and require the administrator to make the payment in accordance with the direction. The types of lump sum payments are:

- Excess Contributions [payable under PBA section 39(4)];
- Additional Voluntary Contributions [payable under PBA sections 63(2) and 63(7)];
- Spousal Pre-retirement Death Benefits [payable under PBA sections 48(1) and 48(2)];
- Pension Small Amounts [payable under PBA sections 50(1) and 50(2)]; and
- Spousal Survivor Pension Small Amounts [payable under PBA section 44(7)].

The timeframes for requesting the transfer and for making the payment are set out in section 22.1 of Regulation 909, which provides that:

- A person entitled to such a payment must direct the plan administrator to pay the amount within 90 days after receiving the option form setting out the entitlement.
- The plan administrator must pay the amount within 60 days after receiving the direction and all of the information required to make the payment.

Note that if the amount the plan administrator is directed to pay into the RRSP or RRIF exceeds the amount permitted to be transferred to the RRSP or RRIF under the federal Income Tax Act (ITA), it must pay the excess amount in cash.

Questions and answers related to these new sections:

Q1. Does the PBA or the Financial Services Commission of Ontario (FSCO) require that the direction to the plan administrator be in a specific form?

A1. No. There is no prescribed or FSCO required form. The plan administrator will provide an option election form that will tell you how to make your election and what information must be provided before the payment can be made. -06/12

Q2. What if the person does not deliver a direction to the plan administrator within the 90 day timeframe?

A2. If the person entitled to receive the payment does not deliver a direction within the 90 day timeframe, then the plan administrator may pay the amount in cash. -06/12

Q3. What if the plan administrator is directed to pay an amount into an RRSP or RRIF that exceeds the amount permitted under the ITA?

A3. If the plan administrator is directed to pay an amount into an RRSP or RRIF that exceeds the amount permitted under the ITA, it must pay the excess amount in cash. -06/12

Q4. What if the person does not give the plan administrator all of the information required to make a payment to an RRSP or RRIF?

A4. The plan administrator is not obligated to make the payment to an RRSP or RRIF if it has not received all of the information necessary to make the payment. For example, the plan administrator will require the RRSP or RRIF account number and the name and address of the financial institution that will receive the payment. The administrator will also inform you of any additional information it requires to make the payment. -06/12

Questions and Answers relating to Surplus - Regulations effective July 1, 2012

Archived Content

Q1. What are the most significant recent changes to the surplus provisions in Regulation 909 brought about by Regulation 178/12?

A1. The most significant changes to the surplus provisions in Regulation 909 are as follows:

- Information about the surplus attributable to employee and employer contributions no longer needs to be included in the notice of application for the Superintendent's consent for payment of surplus to the employer i.e., the notice required under subsection 78(2).
- When determining the minimum amount of surplus that must be retained in the pension fund of a continuing plan, the calculation of liabilities for the ongoing plan must now be based on the sum of liabilities and the liabilities for benefits other than pension benefits and ancillary benefits payable under qualifying annuity contracts, that were excluded in calculating the solvency liabilities.
- Where the employer's application for payment of surplus is based on a written agreement with members, former members, retired members and other persons entitled to payments under the plan, the notice required under subsection 78(2) no longer needs to identify the contractual authority for surplus reversion. In other words, subsection 78(2) notice does not need to contain a historical plan summary and analysis.
- Where an employer chooses to fund the deficit on wind up through a series of annual special payments and an annual report shows there is no further amount to be funded by the employer, any assets remaining in the fund may be withdrawn by an employer by way of an application to recover an overpayment. -06/12

Q2: What rules apply for payment of surplus to the employer while the pension plan continues in existence?

A2: Under the surplus withdrawal rules that came into force on December 8, 2010, an employer can receive payment of surplus while the plan continues in existence, in one of three ways:

1. if the documents that create and support the pension plan and pension fund provide for the payment of surplus to the employer; or
2. if a written agreement between the employer and at least two-thirds (2/3) of members and an appropriate percentage of former members, retired members and other persons who are entitled to payments under the plan provides for the payment of surplus to the employer; or,
3. if the withdrawal of surplus by the employer while the plan continues in existence is authorized by a court order declaring that the employer is entitled to surplus while the plan

continues.

In addition to being satisfied that payment of surplus to the employer is authorized as provided in the paragraph above, the Superintendent must also be satisfied of the following:

- the pension plan has a surplus, based on the reports provided with the employer's application for payment of surplus;
- where all pension benefits under the plan are guaranteed by an insurance company, the pension fund has retained an amount equal to at least two years of the normal cost of the pension plan, determined in accordance with the regulations as surplus;
- where pension benefits are not guaranteed by an insurance company, the greater of the following amounts has been retained in the pension fund as surplus:

  (i) the sum of "A" and "B" where,

  - "A" is an amount equal to twice the normal cost of the pension plan, and,
  - "B" is an amount equal to 5 per cent of the liabilities of the pension plan, determined in accordance with the regulations, and,

  (ii) an amount equal to 25 per cent of the liabilities of the pension plan, determined in accordance with the regulations;

- the employer and the plan comply with all other prescribed requirements regarding surplus payment.

The regulations effective July 1, 2012, provide that for the purpose of determining the minimum amount of surplus that must be retained in the pension fund of a continuing plan, the calculation of liabilities for the ongoing plan must now be based on the sum of solvency liabilities and the liabilities for benefits other than pension benefits and ancillary benefits payable under qualifying annuity contracts, that were excluded in calculating solvency liabilities. -06/12

Q3: What are the rules that apply for payment of surplus to the employer when the pension plan is wound up?

A3: As in the case of a continuing plan, under the surplus withdrawal rules that came into force on December 8, 2010, an employer can receive payment of surplus on the wind-up of a pension plan in one of three ways:

1. if the documents that create and support the pension plan and pension fund provide for the payment of surplus to the employer;
2. if a written agreement between the employer and at least two-thirds (2/3) of members and an appropriate percentage of former members, retired members and other persons entitled to payments under the plan provides for the payment of surplus to the employer; or,
3. if the payment is authorized by a court order declaring that the employer is entitled to surplus when the plan is being wound up.

In addition to being satisfied that payment of surplus to the employer is authorized as provided in the paragraph above, as in the past, the Superintendent must also be satisfied of the following:

- the pension plan has a surplus based on the reports provided with the employer's application for the surplus payment;

- provision has been made for the payment of all of the plan's liabilities as calculated for the purpose of termination of the plan; and,
- the employer and the plan comply with all other prescribed requirements regarding payment of surplus. – 06/12

Q4: How does the employer demonstrate that it is entitled to surplus under the terms of the pension plan?

A4: The employer must demonstrate that it is entitled to the payment of surplus based on the documents that create and support the pension plan and pension fund. Specifically, it must demonstrate that it is entitled to surplus based on plan and funding documents from the plan's inception that may be relevant to surplus entitlement. Where surplus provisions in the plan texts and/or funding documents have been amended or revoked, the employer must demonstrate that it had authority to make such amendments to the plan text(s) and/or funding agreement(s) or to revoke such provisions. The employer does not need to obtain the agreement of plan members or any other affected persons in such circumstances. -06/12

Q5: Who should be a party to a written agreement that provides for payment of surplus to the employer?

A5: Continuing Plan

Where the employer's application for consent to payment of surplus is made while the plan is continuing, a written agreement among the following persons is required for the payment of surplus to the employer based on a written agreement:

- the employer;
- at least two-thirds (2/3) of the plan members (and for this purpose, a trade union that represents members may agree on their behalf); and,
- the number considered appropriate in the circumstances by the Superintendent, of former members, retired members and other persons who are entitled to payments under the pension plan, as of the specified date for payment of the surplus. The specified date must be included in the application.

Wind Up of the Plan

Where the employer's application for consent to payment of surplus is made on the wind up of the plan, a written agreement among the following persons is required for the payment of surplus to the employer based on a written agreement:

- the employer;
- at least two-thirds (2/3) of the plan members (and, a trade union that represents/represented members on the date of the wind up may agree on their behalf); and,
- the number, that the Superintendent considers appropriate in the circumstances; of former members, retired members and other persons who are entitled to payments under the plan, as of the date of the wind up. – 06/12

Q6. What number does the Superintendent consider appropriate of former members, retired members or other persons who are entitled to payments under the pension plan where the employer's application is based on a written agreement?

A6. Where the employer's application for consent to payment of surplus is based on a written agreement, the number that the Superintendent generally considers "appropriate" is: two-thirds of the total number of former members, retired members and other persons who are entitled to payments under the pension plan as of:

- the specified date - where the employer is applying for consent to payment of surplus out of a continuing pension plan and;
- as of the date of the wind-up - where the employer is applying for consent to payment of surplus from a plan that is being wound up. -06/12

Q7. I am a member of a pension plan. Does my employer need my written consent for a refund of surplus?

A7. The basis for the application for the payment of surplus to the employer will determine if your consent is required.

Your employer does not need your written consent if:

- your employer can demonstrate it is entitled to surplus under the terms of the documents that create and support the pension plan and the pension fund; or,
- your employer has obtained a court order declaring that it is entitled to the surplus:
  - while the plan continues -if the employer is applying for consent to payment of surplus out of a continuing pension plan; or,
  - when the plan is being wound up- if the employer is applying for consent to payment of surplus from a plan that is being wound up in whole).

If your employer's application for consent to payment of surplus is based on a written agreement, the employer must obtain written agreement from at least two-thirds (2/3) of members, and an appropriate percentage of former members, retired members and other persons entitled to payments under the plan. Your employer may not need your written consent if it has already obtained the required number of consents. -06/12

Q8. If a written agreement is obtained from two-thirds of members and two-thirds of former members, retired members and other persons entitled to payments under the plan, is the employer required to demonstrate that it is entitled to surplus under the terms of the pension plan?

A8. No. When the employer's application for consent to the payment of surplus is based on a written agreement between the employer and members, former members, retired members and other persons who are entitled to payments under the plan, the employer is not required to demonstrate that it is entitled to surplus under the terms of the pension plan. -06/12

Q9. Now that partial wind ups are no longer permitted, can an employer still make an application to withdraw surplus from a pension plan with a partial wind-up date prior to July 1, 2012?

A9. Yes. A pension plan may still be partially wound up if the effective date of the partial wind up is before July 1, 2012. Therefore, an application for consent to the payment of surplus to the employer on a partial wind up of a pension plan with an effective date before July 1, 2012, may be made by the employer. This includes a partial wind up declared after July 1, 2012, with an effective date before July 1, 2012. -06/12

Q10. If an employer has obtained a court order, is the employer still required to demonstrate entitlement to surplus under the terms of the pension plan, or obtain a written agreement from affected persons?

A10. No. If the payment of surplus to the employer is authorized by a court order declaring that the employer is entitled to the surplus either while the plan is continuing (where the employer's application for consent to payment of surplus relates to a continuing plan) or when the plan is being wound up (where the employer's application for consent to payment of surplus relates to a plan that is being wound up), the employer is not required to demonstrate entitlement to the surplus or obtain a written agreement from affected persons. However, the subsection 78(2) notice to affected persons should include a copy of the court order that the employer is relying on, in support of its application. -06/12

Q11. Is the notice of the application of the payment of surplus required to include information about the surplus attributable to the employee and employer contributions?

A11. No. As of July 1, 2012, Regulation 178/12 eliminates the need for the employer to provide information on the surplus attributable to employee and employer contributions in the notice required under subsection 78(2) of the PBA. This is the case both where the employer has applied for payment of surplus in a continuing/ongoing plan or on the wind up of the plan. -06/12

Q12. I have applied to the Superintendent for consent to the payment of surplus. However, I have not received the consent of the Superintendent to date. Will the changes to Regulation 909 have any impact on my application?

A12. The changes to Regulation 909 may affect your application for payment of surplus. FSCO will review all existing applications in light of the changes and will contact you if your application is affected in any way. If you have any questions or wish to discuss this further, please contact the pension officer responsible for your plan. If you do not know who the pension officer is, you can call FSCO at (416) 250-7250 or toll-free in Ontario and Quebec at 1-800-668-0128 or get this information through the pension plan access link on FSCO's website. -06/12

Q13. How have the rules for payment of surplus changed?

A13. The PBA's provisions have changed to clarify the rules regarding payment of surplus to an employer in three circumstances:

- the plan continues to exist;
- the plan is fully wound up; and
- the plan is partially wound up.

The FAQs below explain the rules for each of these circumstances. - 12/10

Q14. When does a written agreement prevail?

A14. A written agreement prevails over:

- any document that creates and supports the pension plan and pension fund;
- certain requirements of the PBA that apply when the terms of the plan do not address the payment of surplus; and
- any trust that may exist in favour of any person. - 12/10

Q15. Will FSCO update its current policy on the payment of surplus to reflect the new rules? If I want to apply now, how do I proceed?

A15. FSCO is currently developing an updated policy to reflect the recent changes to the rules for surplus applications. In situations where a current policy conflicts with the PBA or regulations, the PBA or regulations govern. Until the new policy is issued, applicants should continue using the existing policy and make whatever modifications are necessary, in light of the new requirements. - 12/10

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FSCO Polices on Surplus

Questions and Answers relating to Surplus Withdrawal On Wind Up - Section 78(2) Notice Requirements

Archived Content

Q1: Are there changes to the information that must be included in the notice the employer is required to provide about an application for payment of surplus under subsection 78(2) of the Pension Benefits Act (PBA)?

A1: The requirements have not changed significantly where the employer's application for payment of surplus is based on the employer's entitlement to surplus. The notice the employer is required to provide where the employer applies to the Superintendent for consent to payment of surplus (subsection 78(2) notice) must continue to include the contractual authority for surplus to be paid to the employer. The notice should include a historical plan summary and analysis, including the actual wording of all the relevant provisions in the documents that create the plan and the pension fund of the plan, including the plan text and funding agreements and the authority of the employer to make amendments to the plan text and/or funding agreement(s).

However, where the employer's application for payment of surplus is based on a court order declaring that the employer is entitled to the surplus, the subsection 78(2) notice need not include a historical plan summary and analysis. Instead, the notice should include a copy of the court order that the employer is relying on in support of its application.

Similarly, if the employer's application for payment of surplus is based on a written agreement, the subsection 78(2) notice need not include a historical plan summary and analysis. However, before consenting to the employer's application, the Superintendent will need to be satisfied that the consents that the employer has obtained to the surplus sharing agreement are "informed consents". Therefore, the Superintendent will look at the information the employer provided to affected persons before their consents were obtained.

In all cases, effective July 1, 2012, the subsection 78(2) notice no longer requires information about the surplus attributable to employee and employer contributions.

Please refer to FSCO pension policies dealing with surplus withdrawals for further information. Note that the policies are being updated to reflect the changes, including notice requirements which come into force July 1, 2012. -06/12

Q2. As there is no need for the employer to include a historical plan summary and analysis in the subsection 78(2) notice, where the employer is relying on a written

agreement with affected persons, what disclosure should be made to the affected parties?

A2. Where the employer is relying on a written agreement, the Superintendent will need to be satisfied that the consents that the employer has obtained to the surplus sharing agreement are "informed consents" and will be looking at the information the employer disclosed to affected persons before their consents were obtained. FSCO's expectation is that the employer will provide disclosure to affected persons of all provisions in the documents that create and support the pension plan and pension fund, including the plan text and any funding agreements from the plan's inception that may be relevant to surplus entitlement, and the authority of the employer to make amendments to plan texts and/or funding agreements. It will be easier for the Superintendent to conclude that affected parties were sufficiently informed where they are represented by legal counsel. - 06/12

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FSCO Policies on Surplus